

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Empowering Customers to Prevent and Detect	)	CG Docket No. 11-116
Billing for Unauthorized Charges (Cramming)	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170
	)	
To: The Secretary		

**COMMENTS**

1 800 COLLECT, INC. ("1 800 COLLECT"), by its attorneys, hereby submits these Comments in response to the Report and Order and Further Notice of Proposed Rulemaking issued by the Commission in the above-referenced proceeding.<sup>1</sup> In the FNPRM, the Commission proposes an opt-in approach to third-party billing, requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on the consumer's phone bill.<sup>2</sup> 1 800 COLLECT believes an opt-in approach is unnecessary and that such an aggressive measure

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<sup>1</sup> See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-42 (rel. Apr. 27, 2012), 77 Fed. Reg. 30915 (May 24, 2012) ("R&O" or "FNPRM"). 1 800 COLLECT filed initial Comments in this proceeding on October 24, 2011, in response to the Commission's original NPRM. See *Comments of 1 800 COLLECT, INC.*, Docket No. CG 11-116 (Oct. 24, 2011); See also *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011) ("NPRM" or "Cramming NPRM"); 76 Fed. Reg. 52625 (Aug. 23, 2011). 1 800 COLLECT filed Reply Comments on November 21, 2011. See *Reply Comments of 1 800 COLLECT, INC.*, Docket No. CG 11-116 (Nov. 21, 2011).

<sup>2</sup> See FNPRM at ¶ 136.

would impose costs on telecommunications businesses and customers far outweighing any consumer protection benefits. In the event the Commission elects to adopt such an opt-in approach to third-party billing, however, 1 800 COLLECT submits that the Commission must also provide for exemptions for legitimate telecommunications services, such as collect calling, both domestic and international. Such exempt telecommunications services are not targets of the Commission's cramming initiatives, yet their value and utility to consumers would be greatly diminished under a mandatory, universal opt-in scheme. Accordingly, collect calls and other, similarly legitimate traditional telecommunications services must be exempt from any final opt-in regulations. In support thereof, 1 800 COLLECT states as follows.

In the R&O, the Commission adopted important measures that will both give consumers the tools to identify and combat crammers placing fraudulent charges on consumer phone bills and discourage bad actors from abusing the third-party billing process. These measures include the requirement that telecommunications carriers notify consumers of the option to block third-party charges if a carrier offers such an option, and the requirement that third-party charges appear on consumer bills in a separate and distinct section from charges assessed by the carrier.<sup>3</sup> 1 800 COLLECT supported these measures in its initial Comments and Reply Comments in this proceeding, and it continues to believe that, given a chance, these measures will significantly reduce the problem of cramming on the part of entities that have no involvement in telecommunications services.<sup>4</sup>

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<sup>3</sup> See FNPRM at ¶¶ 52, 67.

<sup>4</sup> The consumer protection concerns involving cramming have also been ameliorated by actions taken by the two principal domestic telecommunications carriers, Verizon Communications and AT&T. In March 2012, the two carriers announced that they will no longer provide third party billing for enhanced services.

However, in the FNPRM, the Commission leapfrogs past these newly-adopted measures and now proposes the opt-in requirement, essentially a ban on third-party charges on carrier phone bills, except in those instances where a consumer affirmatively agrees to a third-party billing arrangement. As expressed in its earlier Comments and Reply Comments in this docket, 1 800 COLLECT believes that an opt-in scheme, like an absolute third-party ban, simply goes too far and any benefits arising therefrom will overwhelm the burdens that such rules cause. The concrete burdens that a strict opt-in scheme will place on legitimate telecommunications businesses and their customers far exceed the marginally-greater consumer protections such a scheme may offer. Many small telecommunications companies, including 1 800 COLLECT, rely upon billing aggregators and third-party billing arrangements to operate in a cost-effective manner. It is no exaggeration to state that these arrangements are indispensable to the ability of small companies to survive and compete in a competitive telecommunications marketplace, as such entities are financially able to bill and collect for numerous calls each in small amounts. If small telecommunications outfits fail, customers will suffer in kind, as the array of choices and services available to them begins to shrink. 1 800 COLLECT believes that the Commission's proposal is overbroad in its reach, unbalanced in its allocation of costs and benefits, and should not be adopted.

In the event the Commission adopts the opt-in requirement for third-party charges, however, 1 800 COLLECT submits that the Commission must also provide exemptions for legitimate communications services, such as collect calls. As set forth below, in addition to industry stakeholders, most anti-cramming advocates themselves recognize the value that certain

services, such as collect calls, hold for consumers, and, more importantly, recognize that opt-in regulations would prove counterproductive in the context of such services.

As noted in 1 800 COLLECT's Reply Comments, in response to the Commission's original NPRM, many commenters, including major carriers such as Verizon<sup>5</sup> and AT&T,<sup>6</sup> billing aggregators such as Billing Concepts, Inc.<sup>7</sup> and ILD Teleservices,<sup>8</sup> and state regulators and officials such as the Virginia State Corporation Commission<sup>9</sup> and the Attorneys General of 17 States,<sup>10</sup> asserted that legitimate telecommunications services, such as collect calling, should not be a target of the Commission's anti-cramming rules and should be exempt from any general prohibition or opt-in scheme applicable to third-party charges on carrier phone bills. For example, while the Attorneys General of 17 States support a ban on third-party charges from "non-telecommunications service providers," they would exempt from that ban "third-party charges for telecommunications services such as collect calls, operator services, and prisoner calls home, which have not been the source of cramming complaints..."<sup>11</sup> Even the Virginia SCC – the state regulatory body that proposed the ban on third-party charges under consideration

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<sup>5</sup> *Comments of Verizon and Verizon Wireless*, CG Docket No. 11-116 (Oct. 24, 2011).

<sup>6</sup> *Comments of AT&T Inc.*, CG Docket No. 11-116 (Oct. 24, 2011) ("AT&T Comments").

<sup>7</sup> *Comments of Billing Concepts, Inc.*, CG Docket No. 11-116 (Oct. 24, 2011) ("Billing Concepts Comments").

<sup>8</sup> *Comments of ILD Teleservices*, CG Docket No. 11-116 (Oct. 24, 2011).

<sup>9</sup> *Comments of Virginia State Corporation Commission Staff*, CG Docket No. 11-116 (Oct. 24, 2011) ("Virginia SCC Comments").

<sup>10</sup> *Comments of the Attorneys General of Alabama, Alaska, Arizona, Delaware, Georgia, Indiana, Iowa, Kentucky, Maryland, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oregon, Tennessee and Washington*, GC Docket No. 11-116 (Oct. 24, 2011) ("States Attorneys General Comments").

<sup>11</sup> State Attorneys General Comments at 2, n. 2. *See also* States Attorneys General Comments at 23 (supporting "limited exceptions for certain telephone services, such as long distance calls, operator-assisted calls, prisoner calls and dial-around services").

in the NPRM<sup>12</sup> – stated in its Comments that it would exempt from the ban any "telephone calls that are customer initiated by dialing 1+, 0+, 0-, or 1010XXX, or that a customer accepts as collect..."<sup>13</sup> Likewise, the State of Vermont's near total-ban on third-party charges – legislation touted by the Federal Trade Commission and other anti-cramming advocates – explicitly exempts collect calls.<sup>14</sup> Thus, as the record developed in the NPRM proceeding clearly demonstrates, even veterans of the cramming fight and who generally support an opt-in requirement for third-party billing believe traditional telecommunications services, such as collect calling, should be exempt from such a requirement. In fact, the record is devoid of any evidence that traditional telecommunications service providers, including collect calling providers, engage in cramming or engage in practices that abuse consumers.

On June 13, 2012, Senator John D. Rockefeller IV, the Chairman of the Senate Committee on Commerce, Science, and Transportation, introduced Senate Bill 3291, the Fair Telephone Billing Act of 2012, legislation designed to prohibit unauthorized third-party charges on wireline telephone bills.<sup>15</sup> While this Bill would outlaw nearly all third-party charges from carrier bills, it provides a special exemption for legitimate telecommunications services, such as collect calling. According to the Committee's press release accompanying the introduction of the Bill, this legislation would "ban third-party charges on wireline telephone and interconnected VoIP bills, with exceptions for the legitimate third-party charges of telephone-related services,

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<sup>12</sup> See *NPRM* at ¶ 62.

<sup>13</sup> Virginia SCC Comments at 6, n. 12.

<sup>14</sup> See 9 V.S.A. § 2466(f)(1)(c). See also *Comment of Federal Trade Commission*, GC Docket No. 11-116 (filed Oct. 24, 2011) at 6, n. 19.

<sup>15</sup> S.3291, 112th Congress (2012) (<http://www.gpo.gov/fdsys/pkg/BILLS-112s3291is/pdf/BILLS-112s3291is.pdf>).

like collect calls..."<sup>16</sup> The Bill was the product of an extensive investigation conducted by the Senate Committee and, after doing so, Senator Rockefeller reached the same conclusion as most of the anti-cramming advocates who have participated in the instant proceeding: namely that legitimate services such as collect calling must be exempted from third-party billing bans or opt-in schemes. There is no reason for the Commission to reach any other conclusion.

The nearly universal support for an opt-in not to cover collect calling or for an exemption for collect calling, is founded on solid grounds. Calls to exempt services, such as collect calling, stem from the recognition of the value of these services to consumers, and from the fact that such telecommunications services are seldom implicated in cramming schemes. As previously described by 1 800 COLLECT and other parties, banning third-party billing arrangements or subjecting all service providers to consumer opt-in requirements would impose significant financial and operational difficulties on most service providers, other than the incumbent local exchange and interexchange carriers, and consumers would suffer in turn as the breadth and availability of these services declined.

Further, with respect to collect calling, an "opt-in" component is integral to the process already, i.e., customers opt-in to the service and billing features of collect calling on a one-off basis each time they place or accept a collect call. Further, as recognized by other parties and the Commission itself, the situational, "on demand" nature of collect calling does not lend itself to a one-time, fixed decision to opt in or out of collect calling altogether and result in consumers

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<sup>16</sup> *Rockefeller Introduces Telephone Bill Anti-Cramming Legislation*, Press Release, U.S. Senate Committee on Commerce, Science and Transportation, Democratic Press Office (June 14, 2012) ([http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=866363cc-26e0-4243-8ec2-8b7916b99336](http://commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=866363cc-26e0-4243-8ec2-8b7916b99336)).

making initial decisions they may come to regret.<sup>17</sup> Forcing customers to make a single advance decision with respect to collect calls upends the value and utility of the collect calling service model and runs directly counter to consumers' calling practices and needs.

Finally, the Commission does not give sufficient consideration to the workability – or unworkability – of an opt-in regime. For example, in the collect calling arena, international agreements between originating and terminating carriers govern how collect calling revenues are billed, collected and accounted for. These agreements create a workable, efficient international collect calling system that enables domestic and foreign callers to make collect calls to and from the U.S. Any Commission opt-in scheme encompassing collect calls would directly affect these international agreements and disturb the orderly system they have helped create. Nothing has been described in this proceeding as to how an FCC mandated opt-in scheme would possibly be coordinated with inbound or outbound collect calling regimes. Rational administrative action does not include interfering with a properly functioning system and replacing it with a new, untested and ultimately unnecessary regulatory scheme.

In conclusion, in an effort to target abusive cramming practices, the Commission must not adopt an opt-in scheme that casts too wide a net and undermines legitimate telecommunications services at the expense of market competition and consumer choice. The concrete burdens an opt-in scheme would place on legitimate telecommunications businesses and their customers far outweigh the marginally-greater protections such a scheme may provide to a limited, and so far unknown, number of consumers. The Commission should give the measures adopted in the R&O a chance to work before concluding that more drastic measures, which are

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<sup>17</sup> See NPRM at ¶ 139 (citing Billing Concepts Comments at 2-3).

not supported by the record as collected to date, are necessary to reduce the incidence of cramming. However, if the Commission adopts any opt-in proposal, 1 800 COLLECT urges the Commission to steer clear of potential overreach by adopting a clear exemption for collect calls and other legitimate telecommunications services, both on a domestic and international basis. Such an exemption is widely supported by industry stakeholders, anti-cramming advocates and state and federal regulators and legislators alike. It would allow the Commission to pursue more aggressive anti-cramming measures where they are truly needed, without harming legitimate telecommunications services and the many consumers who rely upon them.

WHEREFORE, 1 800 COLLECT, INC. respectfully requests that the Commission abandon its proposal to adopt an opt-in requirement for third-party billing, or, in the alternative, should the Commission impose an opt-in requirement, that the Commission exempt legitimate telecommunications services such as collect calling from the opt-in requirement, on both domestic and international bases.

Respectfully submitted,

**1 800 COLLECT, INC.**

By: \_\_\_\_\_

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